

ASSEMBLY BILL

No. 786

Introduced by Assembly Member Dickinson

February 21, 2013

An act to amend Sections 2010, 2040, and 2084 of, and to add Sections 2154 and 2155 to, the Financial Code, relating to money transmissions.

LEGISLATIVE COUNSEL'S DIGEST

AB 786, as introduced, Dickinson. Money transmissions.

Existing law, the Money Transmission Act, provides for the regulation of money transmissions by the Department of Financial Institutions and the Commissioner of Financial Institutions. The Governor's Reorganization Plan No. 2, as of July 1, 2013, abolishes the Department of Financial Institutions and transfers its responsibilities to the Department of Business Oversight and the Commissioner of Business Oversight.

Existing law, the Money Transmission Act, requires a person who engages in the business of money transmission in this state to be licensed by the department. Existing law provides that only a corporation or limited liability company may be issued a license under the Money Transmission Act. Existing law exempts certain persons or entities from the application of the act, as specified.

This bill would further exempt from the act a person that delivers payroll money on behalf of an employer to employees by check or deposit in a checking or savings account, as specified.

Existing law requires a licensee to maintain tangible shareholders' equity, as defined, in an amount to be determined from time to time by the commissioner, but not less than \$500,000.

This bill would require an applicant to possess, and a licensee to maintain at all times, a minimum net worth of \$100,000 to \$500,000, depending on estimated or actual transaction volume, as determined by the commissioner. The bill would authorize the commissioner to increase that net worth requirement to up to \$2,000,000, if certain criteria are met.

Existing law provides that a licensee shall be deemed to own an eligible security under specified criteria. Existing law provides that no licensee shall be deemed not to own an eligible security solely on account of certain facts, provided that, but for that fact, the licensee would be deemed to own the eligible security.

This bill would provide that no licensee shall be deemed not to own an eligible security solely on account of the fact that the licensee holds the eligible security in a custodial capacity as an agent of its customers in a pooled account in the name of the licensee, as determined by the commissioner.

Existing law sets forth enforcement provisions under the Money Transmission Act. Existing law authorizes the commissioner to direct a licensee who is out of compliance with the Money Transmission Act to comply with the law or discontinue any unsafe or injurious practices.

This bill would provide that the commissioner has continuous authority to exercise the powers set forth in this act whether or not an application for a license has been filed with the commissioner, any license has been issued, or if issued, has been surrendered, suspended, or revoked. The bill would authorize the commissioner to bring an action, or request that the Attorney General bring an action, against any person who has violated or is about to violate the act, and would set forth the relief that is authorized, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2010 of the Financial Code is amended
- 2 to read:
- 3 2010. This division does not apply to the following:
- 4 (a) The United States or a department, agency, or instrumentality
- 5 thereof, including any federal reserve bank and any federal home
- 6 loan bank.

1 (b) Money transmission by the United States Postal Service or
2 by a contractor on behalf of the United States Postal Service.

3 (c) A state, county, city, or any other governmental agency or
4 governmental subdivision of a state.

5 (d) A commercial bank or industrial bank, the deposits of which
6 are insured by the Federal Deposit Insurance Corporation or its
7 successor, or any foreign (other nation) bank that is licensed under
8 Article 3 (commencing with Section 1800) of Chapter 20 or that
9 is authorized under federal law to maintain a federal agency or
10 federal branch office in this state; a trust company licensed pursuant
11 to Section 1042 or a national association authorized under federal
12 law to engage in a trust banking business; an association or federal
13 association, as defined in Section 5102 the deposits of which are
14 insured by the Federal Deposit Insurance Corporation or its
15 successor; and any federally or state chartered credit union the
16 member accounts of which are insured or guaranteed as provided
17 in Section 14858.

18 (e) Electronic funds transfer of governmental benefits for a
19 federal, state, county, or local governmental agency by a contractor
20 on behalf of the United States or a department, agency, or
21 instrumentality thereof, or a state or governmental subdivision,
22 agency, or instrumentality thereof.

23 (f) A board of trade designated as a contract market under the
24 federal Commodity Exchange Act (7 U.S.C. Secs. 1-25, incl.) or
25 a person that, in the ordinary course of business, provides clearance
26 and settlement services for a board of trade to the extent of its
27 operation as or for such a board.

28 (g) A person that provides clearance or settlement services
29 pursuant to a registration as a clearing agency or an exemption
30 from registration granted under the federal securities laws to the
31 extent of its operation as such a provider.

32 (h) An operator of a payment system to the extent that it provides
33 processing, clearing, or settlement services, between or among
34 persons excluded by this section, in connection with wire transfers,
35 credit card transactions, debit card transactions, stored value
36 transactions, automated clearing house transfers, or similar funds
37 transfers, to the extent of its operation as such a provider.

38 (i) A person registered as a securities broker-dealer under federal
39 or state securities laws to the extent of its operation as such a
40 broker-dealer.

(j) A person that delivers payroll money on behalf of an employer to employees by check or deposit into a checking or savings account at a bank, savings bank, savings and loan association, savings association, or credit union, if that delivery is the only money transmission activity of which the person engages.

(j)

(k) A person listed under subdivision (d) is exempted from all the provisions of this division, except Sections 2062 and 2063.

SEC. 2. Section 2040 of the Financial Code is amended to read:

~~2040. (a) A licensee under this division shall maintain tangible shareholders' equity in an amount determined to be adequate by the commissioner from time to time, but in no event shall tangible shareholders' equity be less than five hundred thousand dollars (\$500,000). "Tangible shareholders' equity" means shareholders' or members' equity minus intangible assets as determined in accordance with United States generally accepted accounting principles.~~

2040. (a) An applicant shall possess, and a licensee shall maintain at all times, a minimum net worth computed in accordance with generally accepted accounting principles of one hundred thousand dollars (\$100,000) to five hundred thousand dollars (\$500,000), depending on estimated or actual transaction volume, as determined by the commissioner.

(b) The commissioner may increase the amount of net worth required of an applicant or licensee, up to a maximum of two million dollars (\$2,000,000), if the commissioner determines, with respect to the applicant or licensee, that a higher net worth is necessary to achieve the purposes of this division based on the following:

(1) The nature and volume of the projected or established business.

(2) The number of locations at or through which money transmission is or will be conducted.

(3) The amount, nature, quality, and liquidity of its assets.

(4) The amount and nature of its liabilities.

(5) The history of its operations and prospects for earning and retaining income.

(6) The quality of its operations.

(7) The quality of its management.

1 (8) *The nature and quality of its principals.*

2 (9) *The nature and quality of the persons in control.*

3 (10) *The history of its compliance with applicable state and*
4 *federal law.*

5 (11) *Any other factor the commissioner considers relevant.*

6 ~~(b)~~

7 (c) The commissioner at any time may require a licensee to
8 write down any asset held by it to a valuation that will represent
9 its then fair market value. Any receivable or debt due to a licensee
10 that is past due and unpaid for the period of one year shall be
11 charged off, unless it is well secured or is in process of collection.

12 ~~(e)~~

13 (d) The aggregate value of a licensee's accounts receivable,
14 excluding money transmission receivables, loans or extensions of
15 credit to any one person, or that person's affiliates, cannot exceed
16 50 percent of the licensee's tangible shareholders' equity without
17 the advanced written approval of the commissioner. Whenever
18 such amount equals or exceeds 20 percent of the licensee's tangible
19 shareholders' equity, the licensee shall maintain records evidencing
20 such amount and any security or other source of payment for the
21 amount owed, and such other records as the commissioner may
22 require by order or regulation.

23 SEC. 3. Section 2084 of the Financial Code is amended to read:

24 2084. (a) A licensee shall be deemed to own an eligible
25 security only if the following apply:

26 (1) The licensee owns the eligible security solely and exclusively
27 in its own right, both of record and beneficially.

28 (2) The eligible security is not subject to any pledge, lien, or
29 security interest.

30 (3) The licensee can freely negotiate, assign, or otherwise
31 transfer the eligible security.

32 (b) Notwithstanding subdivision (a), no licensee shall be deemed
33 not to own an eligible security solely on account of any of the
34 following facts, provided that, but for that fact, the licensee would
35 be deemed to own the eligible security under the provisions of
36 subdivision (a):

37 (1) The fact that the eligible security is owned of record by a
38 documented nominee of the licensee or by a securities depository.

1 (2) The fact that the licensee has pledged the eligible security
2 with the United States or any state of the United States to secure
3 payment by the licensee of transmission money.

4 (3) *The fact that the licensee holds the eligible security in a*
5 *custodial capacity as an agent of its customers in a pooled account*
6 *titled in the name of the licensee for the benefit of its customers.*

7 (c) *The commissioner shall make a determination of the*
8 *application of paragraph (3) of subdivision (b) on a case-by-case*
9 *basis.*

10 SEC. 4. Section 2154 is added to the Financial Code, to read:

11 2154. Whenever the commissioner deems it necessary for the
12 general welfare of the public, he or she has continuous authority
13 to exercise the powers set forth in this division whether or not an
14 application for a license has been filed with the commissioner, any
15 license has been issued, or if issued, has been surrendered,
16 suspended, or revoked.

17 SEC. 5. Section 2155 is added to the Financial Code, to read:

18 2155. (a) Whenever the commissioner believes from evidence
19 satisfactory to the commissioner that any person has violated or
20 is about to violate a provision of this division, or a provision of
21 any order, license, decision, demand, requirement, or any regulation
22 adopted pursuant to this division, the commissioner may, in the
23 commissioner's discretion, bring an action, or the commissioner
24 may request the Attorney General to bring an action in the name
25 of the people of the State of California, against that person to enjoin
26 that person from continuing that violation or doing any act in
27 furtherance of the violation. Upon a proper showing, a permanent
28 or preliminary injunction, restraining order, or writ of mandate
29 shall be granted and other ancillary relief may be granted, as
30 appropriate.

31 (b) If the commissioner determines that it is in the public
32 interest, the commissioner may include in any action authorized
33 by subdivision (a), a claim for ancillary relief, including, but not
34 limited to, a claim for restitution, disgorgement, or damages on
35 behalf of the persons injured by the act or practice constituting the
36 subject matter of the action. The court shall have jurisdiction to
37 award additional relief.